

Internal Revenue Service

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In Re:

Legend:

Foreign Parent =

US Parent =

Distributing =

Controlled 1 =

Controlled 2 =

Department =

Proxy Agreement =

Business A =

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:6
PLR-134267-09
Date:
October 28, 2009

State X =

State Y =

Country Z =

n =

Dear :

This letter responds to your July 22, 2009 request for a ruling on behalf of US Parent. The information submitted for consideration is summarized below.

This letter is issued pursuant to Rev. Proc. 2009-25, 2009-24 I.R.B. 1088, regarding one or more significant issues solely under the jurisdiction of the Associate Chief Counsel (Corporate) involving the tax consequences of a transaction (or part of a transaction) that occurs in the context of a § 355 distribution. This Office expresses no opinion as to the overall tax consequences of the transaction described in this letter or as to any issue or step not specifically addressed by this letter. Rather, the rulings contained in this letter only address one or more discrete legal issues involved in the transaction.

US Parent, a State X corporation, is the common parent of an affiliated group of corporations that join in filing a consolidated return ("US Parent Group"). Foreign Parent, a publicly traded Country Z entity, owns, through a disregarded entity, all of the outstanding shares of the sole class of stock of US Parent. US Parent owns all of the outstanding shares of the sole class of stock of Distributing, a State Y corporation. Distributing owns all of the outstanding shares of the sole class of stock of each of Controlled 1 and Controlled 2, each a State Y corporation. The stock of Controlled 1 is subject to a proxy agreement (described below). The US Parent Group has included all the items of income, gain, deduction, and loss of its direct and indirect US subsidiaries, including Distributing, Controlled 1, and Controlled 2, in its consolidated returns since its first year of consolidation.

For valid business reasons, Distributing plans to distribute to its sole shareholder (i.e., US Parent) all of the outstanding stock of each of Controlled 1 and Controlled 2 (respectively, "Distribution 1" and "Distribution 2", and together, the "Distributions") in a transaction intended to qualify as tax free under section 355.

Controlled 1's active trade or business to be relied on by US Parent for purposes of section 355(b) is Business A, which requires security clearances from the federal government to operate. Because of the indirect foreign ownership of stock in Controlled 1, the Department requires that Controlled 1 be effectively insulated from foreign ownership, control, or influence in order to maintain those clearances.

In order to create a security measure designed to insulate Controlled 1 from any foreign control or influence that might arise from Foreign Parent's indirect ownership of stock in Controlled 1, Foreign Parent, US Parent, Distributing, and Controlled 1 have entered into the Proxy Agreement. Pursuant to the Proxy Agreement, Distributing appointed the initial proxy holders (the "Proxy Holders"), who were individuals required to: (1) be resident US citizens; (2) have no prior relationships with Foreign Parent, US Parent, Distributing, or any entities controlled by these companies; (3) certify their willingness to accept their security responsibilities; (4) be eligible for the requisite national security clearance; and (5) be approved by the Department. The Proxy Agreement grants to the Proxy Holders voting rights with respect to the stock of Controlled 1, subject to the terms and conditions set forth in the Proxy Agreement. The Proxy Holders became members of the board of directors of Controlled 1 and are specifically authorized to take certain actions, such as electing other directors, raising working capital, changing or amending Controlled 1's articles of incorporation or bylaws (with certain express limits described below), and disposing of or pledging assets (with certain express limits described below).

The Proxy Holders are not permitted to take certain major corporate actions without Distributing's express written approval. These include: (1) the sale or disposal, in any manner, of assets with value greater than \$n other than in the normal course of business; (2) the pledging, mortgaging, or encumbering of the assets of Controlled 1 for purposes other than obtaining working capital or funds for capital improvements; (3) any merger, consolidation, reorganization, recapitalization, or dissolution of Controlled 1; and (4) the filing by Controlled 1 of any petition under the federal bankruptcy laws or any similar law of any state or foreign country. Furthermore, at Distributing's written request, the Proxy Holders must take whatever actions are necessary to recommend, authorize, or approve these major corporate actions. Moreover, the Proxy Holders may not change or amend Controlled 1's articles of incorporation as they relate to these major corporate actions.

While Controlled 1's stock is subject to the Proxy Agreement, Distributing will be entitled to receive cash dividends declared thereon. Any stock dividends are to be accepted by the Proxy Holders on behalf of Distributing. Distributing may also sell, transfer, or

pledge or encumber all or any portion of its Controlled 1 stock, provided that appropriate notice is given to the Department. The Proxy Holders have no power to sell or otherwise transfer, pledge, or encumber Controlled 1's stock.

The Proxy Holders are required to act in good faith as reasonably prudent persons to protect Distributing's economic interests in Controlled 1 as an ongoing business concern. Furthermore, the Department, the Proxy Holders, and Distributing management must meet at least annually to review the purpose and effectiveness of the Proxy Agreement and to establish a common understanding of the operating requirements and how they will be implemented. In addition, the Proxy Holders and Distributing must meet once a year, and may meet more frequently if a majority of the Proxy Holders agree. With approval of the Department, Controlled 1 and Distributing may meet together as many times during the year as necessary to address key business issues that may arise. In practice, Controlled 1, Distributing, and Foreign Parent officials have met multiple times each year (with Department approval) for Controlled 1 to provide information to, and obtain views of, Distributing and Foreign Parent regarding key business issues.

Distributing has the right to petition the Department to remove a Proxy Holder for gross negligence or willful misconduct, and for acts in violation of the Proxy Agreement. A successor Proxy Holder is to be nominated by the remaining Proxy Holders. Distributing will be permitted to veto, without cause, any successor Proxy Holder proposed by the remaining Proxy Holders. If Distributing vetoes three successive nominees, the third nominee, upon approval by the Department, will be accepted absent an appeal by Distributing to the Department requesting a rejection of the third nominee for reasonable cause.

Distributing has the right to petition the Department to terminate the Proxy Agreement at any time and for any reason. The Department may refuse to terminate the Proxy Agreement only when continuation is necessary in the interest of national security. The Proxy Agreement is subject to termination by the Department at any time under the following circumstances: (1) Controlled 1 is sold to a person not under foreign ownership, control, or influence; (2) the Proxy Agreement is no longer needed to maintain Controlled 1's facility security clearances; (3) the facility security clearances are no longer necessary; or (4) the Proxy Agreement has been breached or the Department determines that termination is in the national interest. Unless renewed, the Proxy Agreement terminates automatically ten years after the date of execution.

Based solely on the information and representations set forth above and in your submission, we rule as follows:

Notwithstanding the Proxy Agreement, the stock of Controlled 1 owned by Distributing possesses at least 80% of the total combined voting power of all classes of Controlled 1 stock entitled to vote for purposes of section 368(c) and

80% of the total voting power of the stock of Controlled 1 for purposes of section 1504(a).

No opinion is expressed or implied concerning the tax consequences of any other aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is given regarding any other issues related to the Distributions, or the tax consequences or characterization of the Distributions.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Sincerely,

Gerald B. Fleming
Senior Technician/Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)